

47 C.F.R. § 1.1320

§ 1.1320 Review of Commission undertakings that may affect historic properties.

Effective: January 16, 2018

(a) Review of Commission undertakings. Any Commission undertaking that has the potential to cause effects on historic properties, unless excluded from review pursuant to paragraph (b) of this section, shall be subject to review under section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. 306108, by applying—

(1) The procedures set forth in regulations of the Advisory Council on Historic Preservation, 36 CFR 800.3–800.13, or

(2) If applicable, a program alternative established pursuant to 36 CFR 800.14, including but not limited to the following:

(i) The Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended, Appendix B of this part.

(ii) The Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings, Appendix C of this part.

(iii) The Program Comment to Tailor the Federal Communications Commission’s Section 106 Review for Undertakings Involving the Construction of Positive Train Control Wayside Poles and Infrastructure, 79 FR 30861 (May 29, 2014).

(b) Exclusions. The following categories of undertakings are excluded from review under this section:

(1) Projects reviewed by other agencies. Undertakings for which an agency other than the Commission is the lead Federal agency pursuant to 36 CFR 800.2(a)(2).

(2) Projects subject to program alternatives. Undertakings excluded from review under a program alternative established pursuant to 36 CFR 800.14, including those listed in paragraph (a)(2) of this section.

(3) Replacement utility poles. Construction of a replacement for an existing structure where all the following criteria are satisfied:

(i) The original structure—

(A) Is a pole that can hold utility, communications, or related transmission lines;

(B) Was not originally erected for the sole or primary purpose of supporting antennas that operate pursuant to the Commission’s spectrum license or authorization; and

(C) Is not itself a historic property.

(ii) The replacement pole—

(A) Is located no more than 10 feet away from the original pole, based on the distance between the centerpoint of the replacement pole and the centerpoint of the original pole; provided that construction of the replacement pole in place of the original pole entails no new ground disturbance (either laterally or in depth) outside previously disturbed areas, including disturbance associated with temporary support of utility, communications, or related transmission lines. For purposes of this paragraph, “ground disturbance” means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils;

(B) Has a height that does not exceed the height of the original pole by more than 5 feet or 10 percent of the height of the original pole, whichever is greater; and

(C) Has an appearance consistent with the quality and appearance of the original pole.

(4) Collocations on buildings and other non-tower structures. The mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup power) on buildings or other non-tower structures where the deployment meets the following conditions:

(i) There is an existing antenna on the building or structure;

(ii) One of the following criteria is met:

(A) Non-Visible Antennas. The new antenna is not visible from any adjacent streets or surrounding public spaces and is added in the same vicinity as a pre-existing antenna;

(B) Visible Replacement Antennas. The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(1) It is a replacement for a pre-existing antenna,

(2) The new antenna will be located in the same vicinity as the pre-existing antenna,

(3) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(4) The new antenna is not more than 3 feet larger in height or width (including all protuberances) than the pre-existing antenna, and

(5) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces; or

(C) Other Visible Antennas. The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(1) It is located in the same vicinity as a pre-existing antenna,

(2) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(3) The pre-existing antenna was not deployed pursuant to the exclusion in this paragraph,

(4) The new antenna is not more than three feet larger in height or width (including all protuberances) than the pre-existing antenna, and

(5) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces;

(iii) The new antenna complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements;

(iv) The deployment of the new antenna involves no new ground disturbance; and

(v) The deployment would otherwise require the preparation of an Environmental Assessment under 1.1304(a)(4) solely because of the age of the structure.

Note 1 to Paragraph (b)(4): A non-visible new antenna is in the “same vicinity” as a pre-existing antenna if it will be collocated on the same rooftop, facade or other surface. A visible new antenna is in the “same vicinity” as a pre-existing

antenna if it is on the same rooftop, facade, or other surface and the centerpoint of the new antenna is within ten feet of the centerpoint of the pre-existing antenna. A deployment causes no new ground disturbance when the depth and width of previous disturbance exceeds the proposed construction depth and width by at least two feet.

(c) Responsibilities of applicants. Applicants seeking Commission authorization for construction or modification of towers, collocation of antennas, or other undertakings shall take the steps mandated by, and comply with the requirements set forth in, Appendix C of this part, sections III–X, or any other applicable program alternative.

(d) Definitions. For purposes of this section, the following definitions apply:

Antenna means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a tower, structure, or building as part of the original installation of the antenna. For most services, an antenna will be mounted on or in, and is distinct from, a supporting structure such as a tower, structure or building. However, in the case of AM broadcast stations, the entire tower or group of towers constitutes the antenna for that station. For purposes of this section, the term antenna does not include unintentional radiators, mobile stations, or devices authorized under part 15 of this title.

Applicant means a Commission licensee, permittee, or registration holder, or an applicant or prospective applicant for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity.

Collocation means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.

Rights of Way or ROW means the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway.

Small Cell means any wireless communications Antenna and all related equipment where: (i) the antenna, excluding the associated equipment, fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure, i.e., one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a cumulative limit of 6 cubic feet if there is more than one antenna/antenna enclosure on the structure; (ii) the wireless equipment associated with the antenna and any pre-existing antennas and associated equipment on the structure, but excluding cable runs for the connection of power and other services, are cumulatively no more than 28 cubic feet in volume.

Tower means any structure built for the sole or primary purpose of supporting Commission-licensed or authorized antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower but not installed as part of an antenna as defined herein.

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of the Commission, including those requiring a Commission permit, license or approval. Maintenance and servicing of towers, antennas, and associated equipment are not deemed to be undertakings subject to review under this section. The following are not an Undertaking: (i) deployment or installation of a Small Cell, and (ii) deployment or installation of a new or replacement Utility Pole necessary to install a Small Cell Collocation on a Rights of Way.

Utility Pole means a pole or similar structure that is or may be used in whole or in part for the Collocation of a Small Cell; provided, however, such term shall not include a monopole; tower; billboard; building; or electric transmission structures. The Utility Pole shall not exceed the greater of (i) ten feet in height above the tallest existing Utility Pole in place as of February 28, 2018 located within 500 feet of the new pole in the same ROW; or (ii) 50 feet above ground level.